IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

CRL.A.No. 1630 of 2006()

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AGAINST THE ORDER IN CRLP.395/2006 Dated 04/08/2006
ST.287/1999 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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APPELLANT: COMPLAINANT:

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C.P. LEELA, W/O. M.K. KRISHNAN,
20, SEEVELI NAGAR, THIRUVANANTHAPURAM.

BY ADV. SRI.VADAKARA V.V.N.MENON
SRI.T.N.SUKUMARAN

RESPONDENTS: ACCUSED:

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S. UNNIKRISHNAN NAMBOODIRI,
T.C.17/1507, NO.82, KAILAS NAGAR,
NEAR BABYLAND SCHOOL, CHENGALLOOR,
POOJAPPURA, THIRUVANANTHAPURAM.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J.M. JAMES, J.**

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Criminal Appeal No.1630 of 2006

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Dated this the 13th February, 2007.

**J U D G M E N T**

A 64 year old woman was before the Additional Chief Judicial Magistrate Court, Thiruvananthapuram, with a complaint, preferred under Section 138 of the Negotiable Instruments Act, and the same was numbered as S.T.No.287/99. However, through the impugned order, the learned Magistrate, dismissed the complaint on the ground that the accused was absent, and the complainant was also absent. There was no representation on behalf of the complainant. The said dismissal is under challenge through this appeal, on obtaining leave of this Court.

2. The learned counsel appearing for the appellant had produced an attested copy of the Proceedings Paper of the court below. Counting the number of postings from 23.4.1999, till the date of passing of the impugned order on 15.3.2005, the counsel submits that, of the total number of 34 postings of the case before the court below, the appellant-complainant-was absent only on 1.6.2004 and 20.10.2004, during which days, applications praying to condone the absence, had been duly filed. It is also the vehement submission of the counsel for the appellant that, on the date of passing of the impugned

order, the complainant was present in the court, but there was no submission to that effect by the counsel, who was not present in the court. Counsel, therefore, assails that the learned Additional Chief Judicial Magistrate, has, without going through the Proceedings Paper, the age of the complainant, appellant, and also without applying the mind, calling the appellant as male, though the complainant is a female, had mechanically dismissed the complaint. Counsel further submits that such mechanical dismissal are against the interest of justice, and the Magistrates may be given directions, not to resort to such type of dismissal, which give untold miseries to the litigants, who approach the courts.

3. No doubt, some of the Magistrates in the State are having more number of cases, for consideration of each day. But, in case, the complainant is absent on a particular time, when the case is called, either it should be adjourned to another date, or the same should be taken on next occasion, so as to enable the complainant to appear before the court below, or the counsel to submit on behalf of the said complainant. Although, Indian Penal Code considers the use of the muscular gender, as also that of the feminine gender, the order only reveal that the learned Magistrate did not apply his mind, nor had he gone through the records. In such circumstances, it is necessary to give an opportunity to the parties to agitate the matter afresh.

4. Therefore, I set aside the impugned order, dated 15.3.2005, and restore S.T.No.287/99 to the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram.

5. This case, being of the year 1999, the learned Magistrate shall give utmost priority, for the disposal of the same. In any case, it shall be disposed of within two months, from the date of appearance of the parties.

6. The learned counsel appearing for the first respondent, accused, submits that the accused would co-operate for the completion of the trial, within the above period.

7. The parties shall appear before the court below on 9.3.2007.

Crl.Appeal is allowed accordingly.

**J.M. JAMES,**
**JUDGE**

nj.